Supreme Court, U.S.
FILED

No. 001533 APR - 4 2001

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In The

Supreme Court of the United States

ROBERT SALERNO,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari
To The Seventh Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Due Process Clause require the recusal of a United States District Judge when a reasonable appearance of bias exists, or must the party seeking recusal satisfy a more stringent standard that essentially requires a showing of actual bias?

2. Does the Due Process Clause require a United States District Judge, who has been the target of a threat allegedly made by the defendant's confederate, to give pretrial notice of the threat to the defendant so that he may seek recusal, and is recusal required in such circumstances?

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PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH CIRCUIT COURT OF APPEALS

PRAYER

Petitioner Robert Salerno ("Salerno") respectfully prays that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit's order denying Salerno's Application for a Certificate of Appealability (the judgment sought to be reviewed) is unpublished and attached hereto in Appendix ("App.") A. The district court's order denying Salerno's Application for a Certificate of Appealability is unpublished and attached hereto in Appendix B. The district court's memorandum opinion and order denying Salerno's petition pursuant to 28 U.S.C. § 2255, *United States v. Salerno*, 2000 WL 821713 (N.D. Ill. 2000), is unpublished and attached hereto in Appendix C.

JURISDICTION

The Seventh Circuit denied Salerno's Application for a Certificate of Appealability on January 10, 2001. App. A. This petition is timely as it has been filed within 90

days of the Seventh Circuit's judgment. This Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). *See Hohn v. United States*, 524 U.S. 236 (1998).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law.

2. Title 28, United States Code, § 2255 provides in pertinent part:

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence

imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

3. Title 28, United States Code, § 2253 provides in pertinent part:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

* * *

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . (B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

1. A multi-defendant superseding indictment named Salerno in three counts. Count One charged Salerno, and others, including one Rocco Infelise ("Infelise"), with RICO conspiracy, 18 U.S.C. § 1962(d). Counts Eight and Nine alleged that Salerno, Infelise and others conspired to murder and murdered Hal Smith for the purpose of maintaining their positions in an enterprise, 18 U.S.C. § 1952B (1985). The district court had jurisdiction over these offenses pursuant to 18 U.S.C. § 3231.

The Honorable Ann C. Williams presided over the proceedings. Five defendants went to trial. On March 10, 1992, a jury found Salerno not guilty of RICO conspiracy, but was unable to reach decision on the murder-related counts. The remaining four trial defendants, including Infelise, were convicted on various counts.

Seventeen months later (after Salerno's co-defendants had been sentenced), the government announced intention to retry Salerno. Salerno moved to dismiss the indictment under the Speedy Trial Act. Judge Williams denied the motion, *inter alia*, on grounds that Salerno had been joined for trial with others, including Infelise, who had filed post-trial and sentencing-related motions, thereby tolling the speedy trial clock. *See United States v. Salerno*, 1994 WL 30955 (N.D. Ill. 1994).

Salerno also filed a double jeopardy-based motion, seeking to estop the government from adducing certain proof given the prior acquittal on the RICO count. After the district court denied that motion, Salerno appealed to the Seventh Circuit, which affirmed in an unpublished

order. With issuance of the Seventh Circuit's mandate, the stage was set for a February 1995 retrial.

On January 23, 1995, the United States Attorney's Office in the Northern District of Illinois received information that Infelise had threatened to have Judge Williams murdered. Although Salerno's retrial was scheduled to commence before Judge Williams in approximately two weeks, the United States Attorney's Office did not then inform Salerno or his counsel of the death threat.

On February 1, 1995, an Assistant United States Attorney, the United States Marshal for the Northern District of Illinois and unknown others met Judge Williams and discussed the threat. Although Salerno's trial was scheduled to start in about a week, neither Salerno nor his counsel were then informed of the meeting. The meeting was not transcribed or recorded.

Unbeknownst to Salerno, the FBI commenced an investigation the very next day.

Five days after the above-described meeting, Judge Williams ruled, over Salerno's strenuous objections, that the government could admit extensive evidence of other crimes (not admitted at the first trial) to prove Salerno's membership in the RICO enterprise, i.e., an alleged mafia street crew with Infelise at the helm. *See United States v. Salerno*, 1995 WL 66347 (N.D. Ill. 1995).

Jury selection commenced on February 7, 1995. At no time prior to the trial did Salerno waive his right to be tried by an unbiased tribunal.

Infelise played a key role at the *Salerno* trial. The district court admitted many hearsay statements by Infelise under the coconspirators exception. The importance of Infelise's role may also be gleaned from the opinion affirming Salerno's conviction. *See United States v. Salerno*, 108 F.3d 730 (7th Cir.), *cert. denied*, 521 U.S. 1122 (1997).

The jury found Salerno guilty of conspiracy to commit murder and murder.

Occurrences regarding the death threat did not end with the guilty verdict. On March 30, 1995, the FBI contacted Judge Williams, who indicated that she had received additional (but unread) correspondence regarding the threat. Judge Williams told the FBI that she believed the threat to be meritless and unworthy of investigation. In June and October 1995, Judge Williams received more correspondence about the threat.

On October 6, 1995, Judge Williams sentenced Salerno to life imprisonment. At no time before sentencing did Judge Williams make known to Salerno that Infelise had purportedly threatened to have her murdered.

2. Around October 1997 (following the conclusion of his direct appeal), Salerno learned of the death threat as a result of collateral relief proceedings in a co-defendant's case. Thereafter, Salerno filed a petition pursuant to 28 U.S.C. § 2255 ("2255 petition"), which alleged, *inter alia*, that Judge Williams should have revealed the alleged death threat or recused herself before Salerno's trial and sentencing.

Judge Williams denied Salerno's 2255 petition. *See* App. C.[1] Salerno subsequently filed an Application for Certificate of Appealability ("COA") in the district court. Because of Judge Williams' ascendency to the Seventh Circuit, the matter was reassigned to another district judge. On August 25, 2000, that judge summarily denied the Application. App. B.

Salerno filed a timely notice of appeal. In a summary order, two judges of the Seventh Circuit denied Salerno's request for a COA. App. A.

REASONS FOR GRANTING THE PETITION

1. A "fair trial in a fair tribunal is a basic requirement of due process." *In Re Murchison*, 349 U.S. 133, 136 (1955). "Not only is a biased decisionmaker constitutionally unacceptable but 'our system of law has always

[1] Salerno also filed a motion requesting Judge Williams to recuse herself from the 2255 proceedings on grounds that the threat engendered a reasonable appearance of partiality. Salerno further asserted that Judge Williams had extrajudicial knowledge of facts, would be a material witness and would be required to evaluate and rule upon her own conduct. The Seventh Circuit holds that the denial of a recusal motion based upon an alleged appearance of partiality "must be appealed immediately by application for writ of mandamus, or it is waived." *United States v. Horton*, 98 F.3d 313, 316 (7th Cir. 1996). So he could preserve his right to appeal, Salerno filed a motion requesting the district court to rule on the recusal motion before considering the merits of the 2255 petition. The district court initially granted that motion, but later rejected recusal in the same opinion denying the 2255 petition on the merits. App. C.

endeavored to prevent even the probability of unfairness.' " *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (quoting *Murchison*, 349 U.S. at 136). "The Due Process Clause may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, justice must satisfy the appearance of justice." *Aetna Life Insur. Co. v. Lavoie*, 475 U.S. 813, 825 (1986) (quoting *Murchison*, 349 U.S. at 136 (further internal quotations omitted)). *See also Taylor v. Hayes*, 418 U.S. 488 (1974); *Liljeberg v. Health Services Corp.*, 486 U.S. 847, 865 n. 12 (1988). This Court's test for determining whether the "appearance of justice" has been satisfied often reverts to the theme propounded in *Tumey v. Ohio*, 273 U.S. 510, 535 (1927) i.e., whether the average man, as judge, might be tempted from holding "the balance nice, clear and true between the State and the accused." *See Aetna*, 475 U.S. at 822; *Taylor*, 418 U.S. at 501; *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964); *Murchison*, 349 U.S. at 136.

A divided en banc Seventh Circuit interpreted the above line of cases in *Del Vecchio v. United States*, 31 F.3d 1363 (1994). In denying Salerno's due process recusal claim here, the district court relied upon the standard fashioned by the *Del Vecchio* majority. App. C-**.

Believing that this Court's "appearance of justice" cases did not require recusal on the basis of "bad appearances" alone, the *Del Vecchio* majority ruled that an appearance of partiality requires disqualification "when a judge is faced with circumstances that present 'some [actual] incentive to find one way or another' or a 'real possibility of bias.' " *Id.* at 1372 (citations omitted). The majority further stated:

> The question is not whether some possible temptation to be biased exists; instead, the question is, when does a biasing influence require disqualification? Consistent with the common law, we begin in answering this question by presuming "the honesty and integrity of those serving as adjudicators." *Withrow*, 421 U.S. at 47, 95 S.Ct. at 1464; *Dyas v. Lockhart*, 705 F.2d 993, 997 (8th Cir. 1983). Disqualification is required only when the biasing influence is strong enough to overcome that presumption, that is, when the influence is so strong that we may presume actual bias. *See Dyas*, 705 F.2d at 996-97. This occurs in "situations . . . in which experience teaches that the possibility of actual bias is too high to be constitutionally tolerable." *Withrow*, 421 U.S. at 47, 95 S.Ct. at 1464. A court must be convinced that a particular influence, "under a realistic appraisal of psychological tendencies and human weakness," poses "such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Id.*

31 F.3d at 1375.

Judge Cummings, joined by Judges Cudahy, Ripple and Rovner, dissented in *Del Vecchio*. The dissent expressly deviated from the majority's "interpretations of recent Supreme Court jurisprudence" and found that the majority had created "its own inordinately narrow test," stating:

> The majority chides me for taking too seriously, in its view, the " 'appearance of justice' language from *Murchison* and *Aetna*." Maj.Op. at

> page 1371, *ante; see also* Judge Easterbrook's concurrence generally. The majority and the concurrence prefer to overlook the Supreme Court's continued approval of this language, and to reanalyze the facts of each case in order to discern what they take to be the actual rule of decision. But we are not authorized to limit an entire line of Supreme Court cases strictly to their facts, disregarding what that Court has explicitly identified as the organizing principle.

31 F.3d at 1392 & 1397 (Cummings, J., dissenting) (footnote omitted).

Certiorari should be granted to rectify the judicial split over interpretation of this Court's cases. That Seventh Circuit judges have splintered over the standard applicable to due process-based recusal claims also evidences that Salerno's appeal advanced an issue that is debatable among reasonable jurists. As such, Salerno satisfied the standard for issuance of a COA, i.e., that reasonable jurists could find the district court's assessment of Salerno's constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Barefoot v. Estelle*, 463 U.S. 880, 883 (1983). The Seventh Circuit's judgment should be vacated and the cause remanded with instructions to issue a COA.

2. A reasonable possibility of bias arises when a judge's self-preservation is threatened by a criminal enterprise of which the defendant is alleged to be a member. *Cf. United States v. Greenspan*, 26 F.3d 1001, 1006 (10th Cir. 1994) (district judge should have recused himself where the defendant conspired to kill the judge and his family); *see also United States v. Yu-Leung*, 51 F.3d 1116,

1119-20 (2nd Cir. 1995) ("a defendant's alleged death threats against a judge may, in some cases, sufficiently raise the specter of bias to warrant the judge's recusal even in the absence of a formal recusal motion"). A death threat upon a district judge supplies substantial motivation to find against the defendant and yields a real possibility for bias. The judge plainly has incentive to see that the defendant is convicted and imprisoned for a long time, as here where Salerno was convicted (after the admission of numerous uncharged crimes not admitted at the first trial) and sentenced to life imprisonment.

This Court has held that an unconstitutionally intolerable probability of bias arises when an adjudicator "has been the target of personal abuse or criticism from a party before him." *Withrow*, 421 U.S. at 47. Surely, if mere verbal affronts directed at a judge supply a due process-based right to disqualification, *Taylor*, 418 U.S. 488, *Johnson v. Mississippi*, 403 U.S. 212 (1971) (*per curiam*), *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), then so does a threat on the judge's life allegedly made by a co-defendant.[2]

---

[2] In denying Salerno's 2255 claim, the district court opined that Infelise's alleged threat had no nexus to Salerno's case. But contrary to the district court's suggestion, there is no inexorable mandate that a bias-prompting matter must emanate from the defendant himself in order to cause inquiry into disqualification. *Cf. Matter of Hatcher*, 150 F.3d 631 (7th Cir. 1998) (bias-causing events did not occur in the case to which the court was assigned). Moreover, insofar as the prosecution was concerned, Infelise and Salerno had plenty of nexus. Indeed, the government did not attempt to disassociate Infelise and Salerno when it sought rulings and invocation of procedures to its liking, e.g., joinder of defendants; formulation of the

Moreover, raising a specter of actual bias, Salerno certainly experienced changed circumstances after the threat. Indeed, Salerno's second trial was much different than the first. The second trial resulted in the government being allowed to present six new witnesses who testified about numerous alleged other crimes allegedly committed by Salerno; a doll house mock-up not presented at the first trial; and a portion of a damning tape-recording not admitted at the first trial. Still more, Salerno's co-defendants who went to trial did not receive life imprisonment, as Salerno did.

"enterprise"; admission of co-conspirator statements; admission of Infelise's offenses, including a murder; admission of Infelise's illicit gambling empire; and opposition to Salerno's speedy trial motion on grounds that Infelise's filing of post-trial motions tolled the speedy trial clock. Still more, the government maintained that Salerno and Infelise were mafia associates, with Infelise serving as a "boss."

We also do not close our eyes to the district court's statements that she discounted the threat. But the dispositive issue is how a reasonable person would view the circumstances. "Even if this judge were one of those remarkable individuals who could ignore the personal implications of such a threat, the public reasonably could doubt his ability to do so." *Greenspan*, 26 F.3d at 1007. *Cf. United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993) ("the judge's actual state of mind, purity of heart, incorruptibility, or lack of partiality are not the issue" in determining whether recusal is necessary). Furthermore, the death threat was given serious attention the week before Salerno's trial (when a clandestine meeting among law enforcement officials and the judge was held). That the judge later reached the subjective conclusion that the threat lacked substance is a red herring since the judge came to her resolution *after* the *Salerno* trial.

In all events, the appearance of bias in this case was plausible enough to have required the district court to have at least provided pretrial notice to the defense. *Cf. United States v. Murphy*, 768 F.2d 1518, 1536 (7th Cir. 1985) (disqualification statute "places on the judge a personal duty to disclose on the record any circumstances that may give rise to a reasonable question about his impartiality"). In an unbroken line of cases, this Court has articulated that the right to notice and an opportunity to be heard at a meaningful time are essential components of the Due Process Clause. *E.g., United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993); *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 538 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972); *In re Oliver*, 333 U.S. 257, 273 (1948). By not disclosing the threat before trial or sentencing, Salerno was denied notice and the opportunity to be heard – and seek recusal – at a meaningful time. *Cf. Yohn v. Love*, 76 F.3d 508, 517 (3rd Cir. 1996) (habeas petitioner denied the due process right to an opportunity to be heard as a result of an *ex parte* conversation between the trial judge, a prosecutor and the Chief Justice of a state supreme court regarding the admissibility of a tape-recording at trial).

In sum, the district court's ruling denying collateral relief and the Seventh Circuit's refusal to issue a COA run afoul of this Court's due process teachings. Certiorari therefore should be granted. In the alternative, this cause should be remanded to the Seventh Circuit with instructions to issue a COA. At this juncture, Salerno has met the standard for the issuance of a COA. *See Slack*, 529 U.S. at 484.

CONCLUSION

WHEREFORE, Petitioner Robert Salerno respectfully requests this Honorable Court to issue a writ of certiorari vacating and reviewing the Seventh Circuit's judgment, remanding for issuance of a COA and/or granting any other appropriate relief.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 11, 2000
Decided January 10, 2001

Before

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

No. 00-3289

ROBERT SALERNO,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 98 C 3980

Ronald A. Guzman, *Judge.*

ORDER

Robert Salerno has filed an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

APPENDIX B

United States District Court,
Northern District of Illinois

Name of Assigned Judge	Ronald A. Guzman
Sitting Judge if Other than Assigned Judge	_____
CASE NUMBER	98C 3980
DATE	August 25, 2000
CASE TITLE	USA V. SALERNO

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) [ ] Filed motion of [use listing in "Motion" box above.]

(2) [ ] Brief in support of motion due ___.

(3) [ ] Answer brief to motion due ___. Reply to answer brief due ___.

(4) [ ] Ruling/Hearing on ___ set for ___ at ___.

(5) [ ] Status hearing [held/continued to] [set for/re-set for] on ___ set for ___ at ___.

(6) [ ] Pretrial conference [held/continued to] [set for/re-set for] on ___ set for ___ at ___.

(7) [ ] Trial [set for/re-set for] on ___ at ___.

(8) [ ] [Bench/Jury Trial] [Hearing] held/continued to ___ at ___.

(9) [ ] This case is dismissed [with/without] prejudice and without costs [by/agreement/pursuant to]

[ ] FRCP4(m)

[ ] General Rule 21

[ ] FRCP41(a)(1)

[ ] FRCP41(a)(2).

10 [ ] [Other docket entry] The court declines to issue a certificate of appealability, which may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner must "demonstrate that the issues are debatable among jurists of reason. *Barefoot v. Estelle*, 463 U.S. 880, 898 n.4 (1982). After reviewing Salerno's 2254 petition and this Court's order of August 18, 2000 none of his claims meet this standard. Therefore, Salerno's Application is denied. (#17).

/s/ Ronald A. Guzman

(11) [ ] [For further detail see order (on reverse side of/attached to) the original minute order.]

[ ] No notices required, advised in open court.

[ ] No notices required.

[ ] Notices mailed by judge's staff.

[ ] Notified counsel by telephone.

[X] Docketing to mail notices.

[ ] Mail AO 450 form.

[ ] Copy to judge/magistrate judge.

MMP courtroom deputy's initials

[ ] Date/time received in central Clerk's Office

[ ] number of notices

[ ] date docketed

[ ] docketing deputy initials

[ ] date mailed notice

[ ] mailing deputy initials

[ ] Document Number

APPENDIX C

2000 WL 821713
(Cite as: 2000 WL 821713 (N.D.Ill.))

Only the Westlaw citation is currently available.

United States District Court, N.D. Illinois,
Eastern Division.

UNITED STATES of America, Plaintiff-Respondent,
v.
Robert SALERNO, Defendant-Petitioner.
No. 98 C 3980.

June 23, 2000.

MEMORANDUM OPINION AND ORDER

WILLIAMS, J.

Petitioner Robert Salerno moves this court to vacate, set aside, or grant a new sentencing hearing pursuant to 28 U.S.C. § 2255. Salerno requests that this court grant his § 2255 motion for three reasons: (1) the court should have recused itself or revealed a death threat made upon the court by one of Salerno's co-defendants' (2) the government illegally taped conversations between Salerno's co-defendants and their attorneys; and (3) the government harassed and threatened unidentified defense witnesses. In addition, Salerno requests that the court recuse itself from all future proceedings regarding this case, issue a motion for discovery regarding the alleged death threat made upon the court, and rule upon his *Singleton* claim. For the reasons set forth below, this court denies Salerno's § 2255 motion, his motion for this court to recuse itself from future proceedings, his motion for discovery, and his *Singleton* claim.

Background

Salerno was involved in a multi-count case that included nineteen other defendants. (Mot. at 1.) In connection with that case, Salerno was charged with three RICO predicate acts, conspiracy to murder and murder of Hal Smith (a bookmaker). (Mot. at 2.) the Seventh Circuit aptly described the history of Salerno's case as follows:

> This case involve[d] the murder of Hal Smith, allegedly by the defendant, Robert Salerno, and his cohorts Rocco Infelise, Louis Marino, and Robert Bellavia. All four men were members of the Ferriola Street Crew – a unit of Chicago's organized crime establishment, often referred to as the "Outfit." The Chicago Outfit operates through "street crews," and the Ferriola Street Crew (named after Joseph Ferriola, the boss of the crew from 1979 to 1989) engaged in a number of criminal activities including the collection of protection money (or "street tax") from bookmakers, houses of prostitution, and adult theatres. Infelise became the boss of the Ferriola Street Crew upon Ferriola's death in 1989. On February 10, 1985, Smith's stabbed, strangled, and tortured body was found in the trunk of his own car. Smith ran a lucrative independent bookmaking operation in Lake County, Illinois. Beginning around 1981, Smith was aware that Marino and Salvatore DeLaurentis – another member of the Ferriola Street Crew – were attempting either to collect street taxes from independent bookmakers or to force them to become partners with the Ferriola crew. After initially resisting these efforts, Smith and his two bookmaking partners began paying

DeLaurentis $3,000 per month in street tax in 1983.

In late February or early March 1984, DeLaurentis arranged to meet Smith and one of his phone clerks at an Arlington Heights restaurant. At the meeting, DeLaurentis asked Smith to pay $6,000 per month in street tax. Smith offered to pay $3,000 and then $3,500, but DeLaurentis insisted upon the $6,000. At that point, Smith and DeLaurentis had a loud argument over who had more money and power, and they began throwing money at each other. Smith then ordered DeLaurentis to leave before he kicked his "olive oil smelling ass" back to Sicily. DeLaurentis retorted that Smith would be "trunk music."

In the spring of 1984, Infelise asked William Jahoda, an Outfit bookmaker, where Smith lived so that the street crew could collect the tax. Throughout the summer of 1984, Salerno, Infelise, Marino, and Bellavia used Jahoda's Long Grove, Illinois house as a base for their "stalking" operation of Smith in an attempt to learn his whereabouts and identify his car. On or about February 4, 1985, Infelise ordered Jahoda to bring Smith to Jahoda's house. Jahoda arranged to meet Smith at a tavern on February 7 and informed Infelise of the meeting.

On the afternoon of February 7, 1985, Salerno, Infelise, Marino, and Bellavia came to Jahoda's house. Infelise instructed Jahoda to bring Smith back to Jahoda's house in Smith's car. He also wanted Jahoda to remain outside and let Smith enter the house alone through the kitchen. That night, Jahoda met Smith and brought him back to his house. Smith entered the house by himself

while Jahoda pretended to go to the mailbox. Jahoda saw Smith through the kitchen door and windows, and he saw Salerno come up behind Smith. Jahoda waited in the garage until Infelise came outside looking for Smith's car. Infelise, however, returned to the kitchen to get Smith's car keys. At that time, Jahoda saw Smith lying on the kitchen floor but still conscious, surrounded by Bellavia, Marino, and Salerno. Marino removed Smith's car keys from Smith's coat pocket and gave them to Infelise. Infelise then drove Jahoda back to the tavern and instructed him to burn his clothes.

Everybody was gone when Jahoda returned home later that evening. Jahoda noticed that part of the kitchen floor had been mopped, and he found a brown bag, a plastic bag for vinyl twine, and a hardware store receipt. He also received a phone call from Infelise who asked Jahoda to look for a cigar and some glasses that Marino thought he had left behind. Jahoda did not find these items; the Arlington Police, however, later recovered both the cigar and glasses from Smith's car. In the years after the murder, Infelise, Bellavia, and Salerno made statements to Jahoda regarding the "stalk" and murder of Smith. Little did they know, however, that Jahoda became an informant for the government in April 1989.

A grand jury returned a multi-count superseding indictment against twenty individuals, including Salerno, charging them with a variety of crimes including RICO conspiracy. Salerno was also named in three RICO predicate acts and two substantive counts. Count 8 charged Salerno of conspiring with Infelise, DeLaurentis,

> Bellavia, and Marino to murder Smith in order to maintain or increase their positions in a racketeering enterprise. Count 9 charged Salerno, Infelise, Bellavia, and Marino with the actual murder of Smith, again for the purpose of maintaining or enhancing their positions in the enterprise.
>
> The government's case against these defendants proceeded to trial, and on March 10, 1992, the jury delivered its verdict. The jury found Salerno not guilty of RICO conspiracy, but it convicted Infelise, DeLaurentis, Bellavia, and Marino on the RICO conspiracy count, as well as other counts. *See generally, United States v. Didomenico*, 78 F.3d 294 (7th Cir.1996). . . . The jury, however, could not reach a verdict on Counts 8 or 9 as to Salerno, Infelise, Bellavia, and Marino. Seventeen months later, the government announced its intention to retry only Salerno on Counts 8 and 9. In the second trial, a jury found Salerno guilty on both counts.

United States v. Salerno, 108 F.3d 730, 733-34 (7th Cir.1997).

On March 10, 1992, a jury found Salerno not guilty of the RICO count and failed to return a verdict on the counts of conspiracy to murder and murder. (Mot. at 2.) On January 23, 1995, the United States Attorney's Office received information that Salerno's co-defendant, Rocky Infelise, allegedly made a death threat against this court. (Mem. at 2.) On February 1, 1995, a United States Attorney, a United States Marshall and others met with this court to inform it of the threat. (Id.) Salerno's retrial began on February 7, 1995. On March 3, 1995, a jury

found Salerno guilty of conspiracy to murder and murder. (Mot. at 2.) This court sentenced Salerno to life imprisonment on October 6, 1995. (Resp. at 1.) On March 4, 1997, the Seventh Circuit Court of Appeals denied Salerno's appeal.[1] *See Salerno*, 108 F.3d at 730. Ultimately, the FBI found the death threat unfounded. (Mot. at 3.) This court did not inform Salerno or his counsel of the threat. (Mot. at 3.)

Analysis

In this § 2255 motion, Salerno alleges: (1) this court should have recused itself or revealed a death threat made upon the court by one of Salerno's co-defendants; (2) the government illegally taped conversations between Salerno's co-defendants and their attorneys; and (3) the government harassed and threatened unidentified defense witnesses. Salerno further requests that this court recuse itself from future proceedings. In addition, Salerno moves for discovery pertaining to the alleged death threat in 1995 and his *Singleton* claim.

I. Recusal

Salerno sets forth two separate arguments for recusal. First, this court should have recused itself in 1995

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[1] Salerno based his appeal on four issues: (1) violation of the Speedy Trial Act; (2) error by the district court in allowing evidence of other crimes to show Salerno's membership in an enterprise; (3) violation of the preclusion component of the Double Jeopardy Clause; and (4) error by the district court in admitting a scale model of the crime scene and allowing the jury to examine the model during deliberations. (Mot. at 2.)

when it learned of the alleged death threat against it by one of Salerno's co-defendants; and second, the court should recuse itself from all future proceedings related to this case. These recusal arguments implicate 28 U.S.C. §§ 455(a), 455(b)(1), & 455(b)(5)(iv), as well as both the Fifth and Sixth Amendments to the United States Constitution.

A. 28 U.S.C. § 455(a)

This court has already addressed recusal for two of Salerno's co-defendants under 28 U.S.C. § 455(a). *See Marino v. United States*, No. 97 C 7159, 1999 WL 39008, *3, *5-*7 (N.D. Ill. Jan 15, 1999). Salerno contends that this court should have recused itself under 28 U.S.C. § 455 (a) when it learned of the death threat allegedly made by co-defendant Infelise. According to 28 U.S.C. § 455(a) "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Actual bias is not necessary; the appearance of bias is adequate to trigger recusal under § 455. *See Liteky v. United States*, 510 U.S. 540, 548 (1994). The standard is "whether an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case." *Pepsico, Inc. v. McMillen*, 764 F.2d 458, 260 (7th Cir.1985).

A Judge's actions can provide the basis for recusal. For example, "recusal was required because '[t]he judge obviously took the [death] threat very seriously, and chose to accelerate court procedures in order to reduce

the risk to him and his family as he perceived it.' " *Marino*, 1999 WL 39008, at *7 (citing *United States v. Greenspan*, 26 F.3d 1001, 1007 (10th Cir.1994)). In addition, the *Greenspan* district court judge denied the defendant's motion for a continuance. *Greenspan*, 26 F.3d at 1006. Accordingly, the Tenth Circuit Court of Appeals found that the district court judge's actions demonstrated a belief in the genuineness of the death threats so that an objective observer could conclude that the judge may not have been impartial. *Id.* at 1007.

This court has already addressed the same argument from co-defendants Marino and Infelise and rejected it. *See Marino*, 1999 WL 39008, at *3, *5-7. Similar to co-defendant Marino, Salerno was never alleged to have directly made any threat against this court. Therefore, Salerno's motion for recusal is analogous to co-defendant Marino's motion, which this court found "even weaker than Infelise's motion because Marino was never reported to be a source of the threats, or directly connected to the threats in any way." *Id.* at *3. Salerno points out, however, that his motion for recusal differs from Marino's motion because "the court became aware of the threat *before* Salerno's retrial and sentencing." Nevertheless, this court's reasoning in *Marino* remains applicable. Salerno has not demonstrated a sufficient connection between the alleged theat [sic] by Infelise and Salerno's trial and sentencing.

Salerno further agues [sic] that "because the trial judge failed to disclose the threat to Salerno before trial or sentencing, the judge was derelict in her duty to provide notice under § 455." Salerno, however, misinterprets the requirements of § 455. The statute does "place[ ] on

judge a personal duty to disclose on the record any circumstances that may give rise to a reasonable question about his impartiality." *United States v. Murphy*, 768 F.2d 1518, 1537 (7th Cir.1985). The judge, however, must first believe that a reasonable question exists regarding her impartiality before making a disclosure on the record. *See id.*

In addition, the Murphy court noted that "any appearance of impropriety under § 455(a) [was] not actual impropriety, so that recusal does not retroactively invalidate judicial acts that preceded the motion Murphy filed." *Id.* at 1541; *accord United States v. Balistreiri*, 779 F.2d 1191, 1204-05 (7th Cir.1985). Therefore, even if Salerno's allegations of the appearance of impropriety existed (in contrast to actual impropriety), the court's decisions prior to Salerno's motion for recusal stand. As previously discussed, however, there was no reasonable question regarding this court's impartiality; consequently, this court had no duty to provide notice.

Salerno attempts to equate this court's pretrial ruling, allowing the admission of evidence of other crimes and imposing the highest maximum sentence, with an alleged bias toward Salerno. The first prong of this theory is that the court exhibited bias toward Salerno because of its pretrial ruling regarding the admission of evidence. First, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source." *Liteky*, 510 U.S. at 555. Second,

"opinions formed by the judge on the basis of facts introduced or events occurring during the course of the current proceedings, or of prior proceedings, do not constitute a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

In fact, Salerno fails to provide any other indicia of bias other than the blanket assertion of an unfavorable pretrial ruling and imposition of the maximum sentence upon Salerno. Moreover, Salerno raised the issue of the admission of "testiomny, some of which was not offered by the government at the first trial" on appeal. *See Salerno,* 108 F.3d at 738. The appeal focused on whether the district court [Judge Williams] had "improperly allowed the government to present evidence of other crimes allegedly committed by [Salerno]." *See id.* The Court of Appeal's review indicated no abuse of discretion by the district court in admitting the evidence. *Id.* at 738-40. Therefore, because there was no improper ruling admitting the evidence on the part of the court, there is no basis for Salerno's assertion that the evidentiary ruling can now serve as a basis for recusal.

Next, Salerno contends that this court's alleged bias manifested itself by the imposition of Salerno's life imprisonment sentence. "In numeric terms, Salerno received a sentence higher than each of his co-defendants albeit unlike the co-defendants, Salerno was sentenced under pre-guideline law." Salerno already raised objections to his sentencing that were overruled. *See United States v. Salerno,* No. 90 CR 87-5, 1995 WL 622415, *1 (N.D. Ill. Oct 20, 1995) (arguing, in part, that the court could not impose a life sentence for conspiracy to murder under 18

U.S.C. § 1952B (now renamed 1959(a)(1)), or impose a life sentence without a jury recommendation). Co-defendants Bellavia, Infelise, and Marino objected to their sentencings on appeal. *See DiDomenico*, 78 F.3d at 304. Salerno, however, failed to raise any objection on direct appeal. *See generally, Salerno*, 108 F.3d at 730.

In a § 2255 motion, a defendant cannot raise "non-constitutional issues that could have but were not raised on direct appeal and constitutional issues that were not raised on direct appeal, unless the § 2255 petitioner demonstrates cause for the procedural default as well as actual prejudice from the failure to appeal." *Marino*, 1999 WL 39008, at *1 (citing *Belford v. United States*, 975 F.2d 310, 313 (7th Cir.1992), *overruled on other grounds by Castellanos v. United States*, 26 F.3d 717, 719-20 (7th Cir.1994); *Norris v. United States*, 687 F.2d 899, 900 (7th Cir.1982); *United States v. Herrera*, 918 F.Supp. 243, 246 (N.D.Ill.1996), *aff'd*, 108 F.3d 1379 (1997)).

Although Salerno does not raise his sentence as a ground for § 2255 relief, he attempts to utilize the argument as a backdoor attempt to prove his recusal allegations. The court rejects this acrobatic attempt to avoid this procedural bar because Salerno provides no cause for the failing to raise the sentencing issue on appeal nor any actual prejudice for failing to appeal this particular issue. Furthermore, the court was within its discretion in imposing Salerno's sentence. *See Salerno*, 1995 WL 622415, at *1.

B. Recusal from Future Proceedings

Salerno also asserts that this court should recuse itself from future proceedings. He alleges that the court

remains impartial because of the alleged death threat made in 1995. Salerno maintains that recusal is warranted under 28 U.S.C. § 455(a) to maintain the appearance of impartiality.

Salerno provides no evidence for the alleged impartiality with regard to future proceedings. In fact, the FBI investigation revealed that the alleged death threat against the court was unsubstantiated. Because there is no evidence that there was *ever* any death threat made against this court by co-defendant Infelise, there is simply no reason that a reasonable person would perceive a significant risk that this court would resolve this case for any other reason than on it [sic] merits.

C. 28 U.S.C. § 455(b)(1)

Salerno also asserts that this court should have recused itself, in 1995, under the requirements of 28 U.S.C. § 455(b)(1), when it learned of the alleged death threat. In addition, Salerno argues that the court must recuse itself from future proceedings under 28 U.S.C. § 455(b)(1) because the court is personally "biased and prejudiced" against Salerno as a result of the death threat and as a matter of due process.

Disqualification is required according to 28 U.S.C. § 455(b)(1) "[w]here [the judge] has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1). The thrust of both recusal arguments focuses on the language of "personal bias or prejudice concerning a party." *Id.* The Seventh Circuit has noted that "[t]he disqualification of a judge for actual bias or

prejudice is a serious matter, and it should be required only when the bias or prejudice is proved by compelling evidence. Accordingly . . . the appropriate standard of proof is . . . whether a reasonable person would be convinced that the judge is biased." *Balistreri*, 779 F.2d at 1202. "The judge is free to make credibility determinations, assign to the evidence what he believes to be its proper weight, and to contradict the evidence with facts drawn from his own personal knowledge." *Id.*

Thus, this court assessed an alleged death threat coming from Salerno's co-defendant and, under the standard of 28 U.S.C. § 455(b)(1), found no reason to harbor person [sic] bias or prejudice toward Salerno. In fact, the court has reiterated that it did not take the threat seriously. This court recognizes, however, that the standard, under § 455(b)(1), is not subjective. But, as previously discussed, a reasonable objective observer would not have a sound basis to believe that a threat coming from Salerno's co-defendant, a threat that had not even been substantiated, would lead to any bias or impartiality. Thus, the court rejects this argument for recusal.

D. 28 U.S.C. § 455(b)(5)(iv)

Salerno also states that 28 U.S.C. § 455(b)(5)(iv) requires recusal from future proceedings because the court is a likely material witness to the allegations contained in his § 2255 petition. Section 455(b)(5)(iv) requires recusal when the judge is "likely to be a material witness in the proceeding." 28 U.S.C. § 455(b)(5)(iv). According to 28 U.S.C. § 455(a) "[a]ny judge . . . shall disqualify himself" when certain circumstances arise. 28 U.S.C. § 455(a);

Balistrieri, 779 F.2d at 1205 (describing the procedure when a judge refuses to recuse himself under § 455(a)). Similarly, the judge "shall also disqualify himself" according to the other sections of the statute that Salerno asserts. 28 U.S.C. § 455(b)(1) & (b)(5)(iv); *Balistrieri*, 779 F.2d at 1202 (noting that "[s]ection 455(b)(1) is directed to the judge and is self-executing"); *United States v. Pollard*, 959 F.2d 1011, 1031 (D.C.Cir.1992) (noting that judge was required to recuse himself pursuant to requirements of § 455(b)(5)(iv)).

The only apparent allegations within Salerno's motions for which the court might be a material witness relate to Salerno's recusal arguments. Under the recusal provisions that Salerno argues, the court makes the determination of whether recusal is necessary. Therefore, the court need not be a material witness to the proceedings. Consequently, the court also rejects this basis of recusal.

E. Fifth and Sixth Amendments

Salerno argues, in part, that he was deprived of his Fifth Amendment right to due process because the court was "personally biased and prejudiced" against him. Contrary to the government's assertion, actual bias need not be shown. Rather, "judges must sometimes recuse themselves when they face possible temptations to be biased, even when they exhibit no actual bias against a party or a cause." *Del Vecchio v. Illinois Dept. of Corrections*, 31 F.3d 1363, 1372 (7th Cir.1994) (en banc). The Seventh Circuit, however, noted that Supreme Court jurisprudence regarding disqualification required " 'direct, personal [and] substantial' influences on the judges

involved." *Id.* at 1373 (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S 813, 822 (1986)); *see also United States v. El-Jassem*, 819 F.Supp. 166, 180 (E.D.N.Y.1993) (discounting threats made against the judge that did not come from the current defendant), *aff'd*, 48 F.3d 1213 (2d Cir.1994). The only alleged influence upon this court came from the alleged death threat made by Salerno's co-defendant Infelise. Salerno never had any direct, personal, or substantial influence upon this court. Therefore, there was no violation of Salerno's right of due process with respect to an impartial judge.

Salerno also assets that he was denied his right to a fair and impartial trial as guaranteed by the Fifth and Sixth Amendments. The Fifth Amendment to the United States Constitution provides, irrelevant part, that "[n]o person shall . . . be deprived of life, liberty or property, without due process of law." The Sixth Amendment requires that "in all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor." Salerno asserts that "[t]he denial of procedural due process warrants the granting of collateral relief." *Yohn v. Love*, 76 F.3d 508, 517 (3d Cir.1996). In *Yohn*, the court found that the defendant was denied his due process notice requirement because "adequte notice requires disclosure of all the issues to be discussed and a sufficient time to prepare." *Id.* The facts of *Yohn*, however, regard an evidentiary decision, whereas the facts of Salerno's case relate to a recusal decision. In *Yohn*, the defendant's attorney did not participate in a telephone call regarding the admissibility of wiretap evidence between the trial judge and Chief Justice while the prosecuting attorney did participate. *Id.* the

ex-parte proceeding in *Yohn* differs from the proceeding that Salerno argues as a basis for denial of his Fifth and Sixth Amendment rights. The proceeding in Judge Williams's chambers arose because of the alleged death threat made by co- defendant Infelise. There is no nexus to Salerno's case, and as previously discussed, the court neither harbored any bias nor displayed any impartiality towards Salerno to deprive him of either his Fifth or Sixth Amendment rights.

II. Illegally Taped Conversations

Salerno first raises the issue of illegally taped conversations in his § 2255 motion. In fact, Salerno incorporates his co-defendants' § 2255 pleadings into his own § 2255 petition. In a § 2255 motion, a defendant cannot raise "nonconstitutional issues that could have but were not raised on direct appeal and constitutional issues that were not raised on direct appeal, unless the § 2255 petitioner demonstrates cause for the procedural default as well as actual prejudice from the failure to appeal." *Marino*, 1999 WL 39008, at *1 (citing *Bedford*, 975 F.2d at 313, *overruled on other grounds by Castellanos*, 26 F.3d at 719-20; *Norris*, 687 F.2d at 900; *Herrera*, 918 F.Supp. at 246).

Salerno provides neither a cause for this procedural default nor an explanation of actual prejudice from the failure to appeal. In addition, this court rejected these arguments when proffered by Salerno's co-defendants. *See Marino*, 1999 WL 39008, at *1-2 (finding that Marino failed the "cause" requirement by explicably failing to raise the issue on appeal, even with ample opportunity to do so and that Marino failed the "prejudice" prong by

fialing [sic] to show that any prejudice resulted from the alleged bugging, and concluding that Marino is, therefore, barred from raising the issue in his § 2255 motion). Therefore, even if Salerno were not procedurally barred from raising this issue in his § 2255 petition, this court would reject his arguments for the same reasons the arguments were rejected for Salerno's co-defendants.

III. Harassment of Unidentified Defense Witness

Salerno also raises, for the first time, the issue of government harassment of an unidentified defense witness in his § 2255 motion. Salerno argues that "[a]s a result of the harassment . . . without the ability to call witnesses in his own defense, [Salerno] was denied his right to a fair trial and his right to present a defense, as guaranteed by the 5th and 6th Amendments of the United States Constitution." Salerno fails to provide a basis for cause for his procedural default, much less actual prejudice from the failure to appeal this issue. In fact, Salerno's reply brief never mentions this argument or attempts to respond to the government's objections.

IV. Fifth and Sixth Amendments

Salerno argues that, because he was unable to procure witnesses he was deprived of both his Fifth and Sixth Amendment rights. While these rights are bedrock principles to our jurisprudence, speculation and failure to follow procedural standards preclude relief under either Fifth or Sixth Amendments. In short, because Salerno did not raise this issue on appeal and failed to provide the

court with cause stating why it was omitted from his first appeal, the court rejects these arguments as a basis for § 2255 relief.

V. Motion for Discovery

Salerno requests a motion for added discovery[2] of the alleged death threat made against this court in 1995. Discovery in § 2255 proceedings shall be granted in the judge's "discretion and for good cause . . . but not otherwise." 28 U.S.C.A. § 2255 Rule 6(a). In addition, the "[r]equest for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced." *Id.* § 2255 Rule 6(b).

Good cause may be satisfied " '[w]here specific allegations before the court show reason to believe that the

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[2] Specifically, Salerno requests the following:

a. Production of all written correspondence received by Judge Williams and/or the government regarding the threat.

b. Production of a transcript of the February 1, 1995 meeting between Judge Williams, AUSA Vogel, Marshal Deliberate indifference Leonardi and others. . . .

c. Production of any and all notes taken regarding or during the February 1, 1995 meeting.

d. Identification of all participants in the February 1, 1995 meeting.

e. Leave to dispose all participants in the February 1, 1995 meeting.

f. Production of all FBI 302's and any other investigative memoranda regarding the threat investigation.

(Peter Discovery Mot. at 3-4.)

petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry." ' *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 299 (1969)). Habeas petitioners, however, lack the same "broad discovery provisions" available under the Federal Rules of Civil Procedure. *Id.* at 904. In *Bracy*, the petitioner made a showing of specific allegations before the discovery was granted. *See Bracy*, 520 U.S. at 909 (noting that the petitioner "made a sufficient showing, as required by Habeas Corpus Rule 6(a), to establish 'good cause' for discovery").

In contrast, Salerno speculates, but fails to provide specific allegations that this court was biased and impartial because of the alleged death threat by one of Salerno's co-defendants. The discovery afforded to Habeas Corpus petitioners, moreover, remains limited. *See Harris*, 394 U.S. 286, at 299. Therefore, this court denies Salerno's motion for discovery.

V. Singleton Claim

Salerno notes that there were several governmental witnesses, particularly William Jahoda, who testified in exchange for benefits from the United States Government. Salerno presumably seeks either a reversal of his conviction or a suppression of these witnesses' testimony and therefore a retrial based upon the *Singleton* decision. *See United States v. Singleton*, 144 F.3d, 1343 (10th Cir.1998). The Tenth Circuit Court of Appeals, however, vacated its own decision in *Singleton*. *See United States v.*

Singleton, 165 F.3d 1297 (10th Cir.), *cert. denied*, 527 U.S. 1024 (1999). Nevertheless, Salerno asks this court to consider the rationale of Singleton that was adopted by other district courts.

The Seventh Circuit Court of Appeals, however, made clear that under 18 U.S.C. § 201(c)(2) the "government may promise immunity, benefits and security in exchange for truthful testimony." *United States v. Blassingame*, 197 F.3d 2371, 285 (7th Cir.1999), *cert. denied*, *Fuller v. United States*, 120 S.Ct. 2024 (2000). Other circuits agree that the government may, according to 18 U.S.C. § 201(c)(2), grant leniency in exchange for truthful testimony. *See United States v. Hunte*, 193 F.3d 173, 174 (3d Cir.1999), *cert. denied*, 120 S.Ct. 962 (2000); *United States v. Johnson*, 169 F.3d 1092, 1098 (8th Cir.), *cert. denied*, 120 S.Ct. 143 (2000); *United States v. Lara*, 181 F.3d 183, 197-98 (1st Cir.), *cert. denied*, 120 S.Ct. 223 (1999); *United States v. Ramsey*, 165 F.3d 980, 987 (D.C. Cir.) *cert. denied*, 120 S.Ct. 223 (1999); *United States v. Rodriguez*, 182 F.3d 902, (2d Cir.1999) (table); *United States v. Briones*, 165 F.3d 918 (9th Cir.1998) (table), *cert. denied*, 119 S.Ct. 1369 (1999); *United States v. Carroll*, 166 F.3d 334 (4th Cir.1998) (table), *cert. denied*, 525 U.S. 1168 (1999); *United States v. Haese*, 162 F.3d 359 (5th Cir. 1998), *cert. denied*, 526 U.S. 1138 (1999), *United States v. Ware*, 161 F.3d 414, 421 (6th Cir.1998), *cert. denied*, 526 U.S. 1045 (1999). Consequently, this court rejects Salerno's *Singleton* claim.

Conclusion

For the reasons stated above, the court denies Salerno's § 2255 petition, his motion for this court to recuse itself from future proceedings regarding this case [6-1], his motion for discovery [8-1], and his *Singleton* claim. The court also grants the government's motion to file a response in excess of 15 pages [11-1].